

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

DEPARTMENT OF TRANSPORTATION
98 MAY 11 PM 3:50
DOCKET SECTION

Applications of :

TRANS STATES AIRLINES, INC.
AMERICA WEST AIRLINES, INC.
SIMMONS AIRLINES, INC.
d/b/a AMERICAN EAGLE
ATLANTIC COAST AIRLINES, INC.

OST-97-2368' 56
OST-97-2970 - 23
OST-97-2985 - 155
OST-97-3259 - 118

for exemptions from 14 CFR Part 93,
Subparts K and S, pursuant to 49 USC
41714

OBJECTIONS OF AMERICAN EAGLE AIRLINES, INC.
(FORMERLY SIMMONS AIRLINES, INC. d/b/a AMERICAN
EAGLE) TO ORDER 98-4-21, OR IN THE ALTERNATIVE
PETITION FOR RECONSIDERATION

Communications with respect to this document should be sent to:

DANIEL P. GARTON
President
American Eagle Airlines, Inc.
P.O. Box 619616, MD 5475
DFW Airport, TX 75261

WILLIAM K. RIS, JR.
Vice President - Government
Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

HOLLY ELIZABETH STROUD
General Counsel
American Eagle Airlines, Inc.
P.O. Box 619616, MD 5494
DFW Airport, Texas 75261

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)
carl_nelson@amrcorp.com
(email)

May 11, 1998

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Applications of

TRANS STATES AIRLINES, INC.	OST-97-2368
AMERICA WEST AIRLINES, INC.	OST-97-2970
SIMMONS AIRLINES, INC.	OST-97-2985
d/b/a AMERICAN EAGLE	
ATLANTIC COAST AIRLINES, INC.	OST-97-3259

for exemptions from 14 CFR Part 93,
Subparts K and S, pursuant to 49 USC
41714

OBJECTIONS OF AMERICAN EAGLE AIRLINES, INC.
(FORMERLY SIMMONS AIRLINES, INC. d/b/a AMERICAN
EAGLE) TO ORDER 98-4-21, OR IN THE ALTERNATIVE
PETITION FOR RECONSIDERATION

American Eagle Airlines, Inc. (formerly Simmons Airlines, Inc. d/b/a American Eagle)¹ hereby objects to Order 98-4-21, April 21, 1998, pursuant to ordering paragraph 5, or in the alternative petitions for reconsideration, pursuant to 14 CFR 302.37.

Recognizing the substantial needs of small communities for service to Chicago O'Hare International Airport, American Eagle applied on October 9, 1997 for exemption slots

¹By Order 98-4-24, April 23, 1998, the Department transferred Simmons' certificate of public convenience and necessity for domestic air transportation to American Eagle Airlines, effective April 30, 1998, as part of an intra-corporate reorganization of the American Eagle carriers.

to permit three daily roundtrips with regional jet aircraft to 10 nonhub cities. American Eagle's application triggered competing requests from two United Express operators, Trans States Airlines, Inc. and Atlantic Coast Airlines, Inc. By Order 98-4-21, the Department awarded 16 ORD exemption slots to American Eagle (on a temporary basis and subject to show-cause procedures) to serve four cities (Duluth, Fayetteville, Shreveport, and Montgomery); 16 to Trans States d/b/a United Express to serve three cities (Chattanooga, Roanoke, and Tri-Cities); and 16 to Atlantic Coast d/b/a United Express to serve three cities (Charleston, Wilkes-Barre, and Springfield/Branson). Moreover, with respect to American Eagle, the Department intends to reassign 16 ORD slots that American Eagle currently uses for Essential Air Service at Bloomington, IL, Champaign, IL, and La Crosse, WI, and then "replenish" those slots to permit continued EAS service at these three points.

American Eagle objects to Order 98-4-21 in two respects. First, the Department proposes to award only 16 permanent ORD slots to American Eagle to serve four cities (resulting in two daily roundtrips for each), while awarding 16 slots to Trans States d/b/a United Express, and 16 slots to Atlantic Coast d/b/a United Express, to serve three cities each (resulting in three daily roundtrips for two-thirds of their cities). The Department should promptly remedy this inequity

by granting four additional slots to American Eagle, so that it will be similarly positioned to provide three daily roundtrips to two of its cities.

Second, the Department's decision to transfer slots from American Eagle's EAS service in Illinois and Wisconsin, and then replenish those slots with 16 additional ones, is not only an unnecessary departure from prior precedent involving award of ORD exemption slots to a non-new entrant United Express carrier, but would apparently result in having the replenished slots tagged as EAS slots by the FAA, even though the slots that American Eagle currently uses for EAS service at Bloomington, Champaign, and La Crosse are not restricted. American Eagle would therefore be substantially and inequitably penalized as a condition for accepting additional slots to serve Duluth, Fayetteville, Shreveport, and Montgomery, contrary to basic principles of fairness in administrative proceedings.

In support of these objections, American Eagle respectfully states as follows.

- I. AMERICAN EAGLE SHOULD RECEIVE FOUR ADDITIONAL ORD EXEMPTION SLOTS (FOR A TOTAL OF 20 PERMANENT SLOTS) TO PERMIT THREE DAILY ROUNDTRIPS TO TWO OF ITS CITIES.

The Department's decision to award 32 ORD exemption slots to United Express, and just 16 to American Eagle, when United/United Express already command the lion's share of slots

at Chicago,² is fundamentally unfair and contrary to the public interest. Because United has chosen to operate its commuter network with multiple franchisees, United is able to muster multiple surrogates as applicants for exemption slots, as it did in this proceeding, and further bolster its lead.

Not only did United Express receive two-thirds of the small community slots the Department awarded, but each United Express carrier is required to serve only three cities, while American Eagle must spread the same number of slots over four cities. As a scheduling matter, this means that Trans States d/b/a United Express can offer three daily roundtrips to two of its three cities; Atlantic Coast d/b/a United Express can also offer three daily roundtrips to two cities; but American Eagle would be limited to two daily roundtrips to each of the four cities it was awarded.

This is an unwarranted penalty against American Eagle, and against the communities that American Eagle would serve. Such a result is also contrary to the expressed intent of Order 98-4-21, which asserts that "we find a compelling case for giving equal consideration to Simmons' proposal with those of ACA and Trans States," and that "a significant element of

²Prior to Order 98-4-21, United and its United Express partners held 1,016 O'Hare slots, compared to 898 held by American and American Eagle. With the award of 32 additional slots to United Express and 16 to American Eagle, the totals would be 1,048 v. 914.

equity...weighs in favor of awarding an appropriate number of slot exemptions to each of the applicants" (p. 17, emphasis added).

The Department can partially ameliorate the fundamental inequity of awarding a disproportionate number of exemption slots to United Express by granting four additional slots to American Eagle. With a total of 20 permanent slots to spread out over four communities, American Eagle will be able to provide three daily roundtrips to two of its cities, matching the capability of the two United Express applicants.

Granting four additional ORD exemption slots to American Eagle would still be within the limit of 60 slot exemptions at O'Hare on which the Department based a related environmental assessment issued with Order 97-10-16, October 24, 1997 (see Order 98-4-21, p. 5). In the present order, the Department has granted 48 slots for small community service, and five slots to America West for Phoenix-O'Hare service; by Order 97-10-16, the Department granted two slots to Reno Air for Reno-O'Hare service. The resulting total -- 55 slots -- leaves five to be assigned. The Department should award four of the five available slots to American Eagle to remedy the inherent inequity of ordering service to more communities with the same number of slots.

- II. THE DEPARTMENT SHOULD NOT USE A PROCEDURE REASSIGNING SLOTS FROM AMERICAN EAGLE'S EAS SERVICE IN ILLINOIS AND WISCONSIN, BUT IF IT DOES SO THE "REPLENISHED" SLOTS SHOULD NOT BE TAGGED AS EAS SLOTS.

American Eagle is at a loss to understand why the Department felt compelled to devise a procedure in this proceeding to reassign 16 slots that American Eagle presently uses for EAS service between Chicago and Champaign, Bloomington, and La Crosse, and then "replenish" those slots to allow continued EAS service to the three EAS points. We have found nothing in the statute, or in prior precedent involving a non-new entrant United Express carrier, to call for such a procedure.

American Eagle applied for ORD exemption slots under 49 USC 41714(a), as modified by a directive from Congress that the Department use its exemption authority to improve service at small communities that do not qualify as EAS points. The Congressional directive, which the Department quotes in Order 98-4-21, pp. 3 and 18, is contained in the Senate Report to the DOT FY 1997 appropriations bill; it requires the Department to "use exemption authority to improve service to nonhub airports where significant improvements can be achieved" (S. Rep. No. 325, 104th Cong., 2nd Sess. at 12, 1996).

All of the cities at issue in American Eagle's application are nonhub airports as defined by FAA statistics, and American Eagle's request falls strictly within the directive issued by Congress. American Eagle is not a new entrant

at O'Hare, but nothing in the Congressional language limits applicants for slots to serve small communities to non-new entrant status.

Indeed, by Order 97-1-7, January 16, 1997, the Department granted Great Lakes Aviation d/b/a United Express 20 ORD exemption slots to serve five communities, including six slots for service to Sioux Falls. Great Lakes, which presently holds a total of 74 O'Hare slots (consisting of 26 owned slots and 48 exemption slots), is not a new entrant, and Sioux Falls did not qualify for EAS slots. Nonetheless, the Department granted exemption slots to Great Lakes to serve Sioux Falls by Order 97-1-7, relying on the Congressional directive, and without resorting to the device of reassigning slots used by Great Lakes for unrelated EAS service and "replenishing" those slots so that such EAS service could continue.

American Eagle, a non-new entrant at O'Hare, is entitled to the same procedures the Department used in 1997 to award exemption slots to Great Lakes d/b/a United Express, another non-new entrant at O'Hare. The Department should use direct procedures to award 20 permanent ORD exemption slots to American Eagle to provide small community service to Duluth, Fayetteville, Shreveport, and Montgomery, without creating an indirect process of reassigning and replenishing slots that American Eagle uses for EAS service in Illinois and Wisconsin.

If, however, the Department continues to adhere to the reassignment/replenishment procedure, the replenished slots should not be tagged as EAS slots. American Eagle presently serves Bloomington, Champaign, and La Crosse by using O'Hare slots from its unrestricted inventory. If slots used for such service are to be reassigned and replenished, the new slots for EAS service should have the same status as the present slots for EAS service, that is, they should be unrestricted.³ If the replenished slots were tagged as EAS slots, the Department's procedural device would not be a neutral vehicle to produce the desired result, but would significantly penalize American Eagle by converting unrestricted slots in its present inventory to highly restricted EAS slots, further hobbling American/American Eagle in competing at O'Hare with United/United Express.

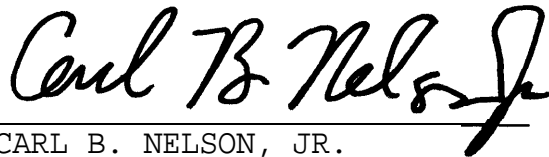
CONCLUSION

For the foregoing reasons, the Department should grant four additional ORD exemption slots to American Eagle (for a total of 20 permanent slots to serve Duluth, Fayetteville, Shreveport, and Montgomery), and should make such an

³We do not dispute that the slots assigned to American Eagle and United Express for service to the small communities at issue in Order 98-4-21 will be restricted (see p. 12; "[i]n the event that any carrier fails to initiate or discontinues the regional jet services specifically enabled under the slot exemptions granted here, the effectiveness of the exemptions will terminate"),

award directly and not through the procedural device of reassigning and replenishing slots used by American Eagle for unrelated EAS service to points in other states.

Respectfully submitted,

A handwritten signature in black ink, reading "Carl B. Nelson, Jr." in a cursive script. The signature is written over a horizontal line.

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.

On behalf of American Eagle
Airlines, Inc. (formerly
Simmons Airlines, Inc. d/b/a
American Eagle)

May 11, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the attached service list.


CARL B. NELSON, JR.

May 11, 1998

Hulas Kanodia
President and CEO
Trans States Airlines, Inc.
d/b/a United Express
9275 Genaire Drive
St. Louis, MO 63134

Stephen H. Lachter
1150 Connecticut Ave., N.W.
Suite 900
Washington, D.C. 20036

Robert P. Silverberg
Bagileo, Silverberg &
Goldman, LLP
1101 30th Street, N.W.
Suite 120
Washington, D.C. 20007

Joanne Young
Baker & Hostetler
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036

Joel Stephen Burton
Ginsburg, Feldman & Bress,
Chartered
1250 Connecticut Ave., N.W.
Suite 800
Washington, D.C. 20036

John C. Grinden
Executive Director
Duluth Airport Authority
4701 Airport Drive
Duluth, MN 55811

Kenneth P. Quinn
Winthrop, Stimson, Putnam &
Roberts
1133 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20036

Dale Frederick
Director
Drake Field
4500 S. School Ave.
Suite F
Fayetteville, AR 72703

Mary Rose Loney
Commissioner
Chicago Dep't of Aviation
Chicago O'Hare Int'l Airport
P.O. Box 66142
Chicago, IL 60666

Stan Green
Chairman
Northwest Arkansas Regional
Airport
100 West Center St.
Fayetteville, AR 72701

Roy Miller, Jr.
Director
Shreveport Regional Airport
5103 Hollywood
Suite 300
Shreveport, LA 71109

Danny C. Huffman
Director
Yaeger Airport
100 Airport Rd.
Suite 175
Charleston, WV 25311

Phil B. Perry
Executive Director
Montgomery Airport
4445 Selma Highway
Montgomery, AL 36108

Robert D. Hancik
Director
Springfield/Branson
Regional Airport
5000 West Kearney
Springfield, MO 65803

Hugh Davis
Director
Chattanooga Metropolitan
Airport
P.O. Box 22444
Chattanooga, TN 37422

Barry J. Centini
Director
Wilkes-Barre/Scranton
Int'l Airport
100 Terminal Rd.
Avoca, PA 18641

John Katon
Director
Roanoke Regional Airport
5202 Aviation Drive
Roanoke, VA 24012

Suzanne M. Lewis
Manager
Tweed New Haven Airport
Terminal Bldg.
155 Burr Street
New Haven, CT 06612

John E. Hanlin
Executive Director
Tri-Cities Airport Comm'n
P.O. Box 1155
Highway 75
Blountville, TN 37617

Douglas C. Voss
Chairman
Great Lakes Airlines d/b/a
United Express
7900 Xerxes Ave. S.
Bloomington, MN 55431

John V. Coleman
Director
Office of Aviation Analysis
Department of Transportation
400 7th Street, S.W.
Room 6401
Washington, D.C. 20590

Lorelei Peters
Office of the Chief Counsel
Federal Aviation Admin.
800 Independence Ave., S.W.
Room 912
Washington, D.C. 20591

Dennis Devany, Chief
EAS and Domestic Analysis
Department of Transportation
400 7th Street, S.W.
Room 6401
Washington, D.C. 20590

Brian Meehan
Air Traffic Operations
Federal Aviation Admin.
800 Independence Ave., S.W.
Room 417
Washington, D.C. 20591

James Dann
Deputy Assistant General
Counsel
Department of Transportation
400 7th Street, S.W.
Room 10102
Washington, D.C. 20590

Robert E. Dunn
SH&E, Inc.
One Main Street
Cambridge, MA 02142

Regis Milan
Office of Aviation Analysis
Department of Transportation
400 7th Street, S.W.
Room 6419
Washington, D.C. 20590

Aaron A. Goerlich
Katherine M. Aldrich
Boros & Garofalo, P.C.
1201 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20036

Steve Davis
Office of Aviation Analysis
Department of Transportation
400 7th Street, S.W.
Room 6419
Washington, D.C. 20590

Edward P. Faberman
Executive Director
Air Carrier Association
of America
1747 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20006